IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 20, 2006

SHELVY ANTWAIN BAKER v. STATE OF TENNESSEE

Direct Appeal from the Criminal Court for Davidson County
No. 2000-B-806 Cheryl Blackburn, Judge

No. M2005-01760-CCA-R3-PC - Filed October 13, 2006

The petitioner, Shelvy Antwain Baker, pled guilty in the Davidson County Criminal Court to one count of first degree murder, two counts of attempted first degree murder, three counts of aggravated robbery, and three counts of attempted aggravated robbery. As a result of his guilty pleas, the petitioner received a total effective sentence of life plus twenty years incarceration in the Tennessee Department of Correction. Subsequently, the petitioner filed a petition for post-conviction relief, alleging that his trial counsel was ineffective, his guilty pleas were not knowingly and voluntarily entered, and the State committed prosecutorial misconduct. The post-conviction court denied the petition, and the petitioner appeals. Upon review of the record and the parties' briefs, we affirm the judgment of the post-conviction court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which DAVID G. HAYES and THOMAS T. WOODALL, JJ., joined.

Mike J. Urquhart, Nashville, Tennessee, for the appellant, Shelvy Antwain Baker.

Paul G. Summers, Attorney General and Reporter; C. Daniel Lins, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Bret Gunn and Roger Moore, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

The record before us reveals that on July 14, 1999, the appellant committed the murder of Terrence Wilkins at the Barcelona Apartments (hereinafter "the Barcelona case"). On July 16, 1999,

at a Waffle House in Nashville, the appellant committed one count of first degree murder, three counts of aggravated robbery, and one count of attempted aggravated robbery. On July 19, 1999, at a Sonic restaurant, the appellant committed two counts of attempted first degree murder and two counts of aggravated robbery. At a plea hearing on September 14, 2000, the appellant pled guilty to the offenses from the Waffle House and Sonic (hereinafter "the Waffle House/Sonic cases"). The State recited the following factual basis for the pleas:

> [T]he State's witness would be available and would testify that on July the 16th of 1999, [the petitioner], as well as the three co-defendants, Miss Hill, Miss Beaudoin, and Clifton Smith, were together. They were discussing the possibility of robbing a business and discussing which business would be a good target.
>
> At some point during that evening, [the petitioner] armed himself with a Mossberg shotgun; and the four of these people decided to go to the Waffle House located on Harding Place here in Davidson County, with the intent to rob that business.
>
> We believe the proof will show that Miss Hill and Miss Beaudoin remained outside the business, in the car; Mr. Smith armed himself with a 22-caliber handgun and stood outside the door of the business, with the intention of keeping anyone from leaving the business, while [the petitioner] entered the Waffle House with the shotgun and demanded money both from the patrons, as well as the employees of that business. He was able, with the – by that action, to take money and other property from Edward Ratcliffe (ph.), who was a patron in the restaurant; Christie Buckler (ph.); and – who I believe was working at the restaurant; and Mr. John Dest (ph.); and Robert Sladen (ph.), and also attempted but did not receive property from a Mr. David Harris (ph.). All those people were either employees or patrons of the Waffle House at that time.
>
> As this was occurring, Mr. Ratcliffe took his wallet from his pocket and tossed it in [the petitioner's] direction. In response to that, [the petitioner] lifted the shotgun, fired, and struck Mr. Ratcliffe one time in the chest, killing him.
>
> At that time, [the petitioner], as well as the three co-defendants, left the store with the proceeds that they had got from the victims.
>
> The proof will further show, Your Honor, that three days later, on July 19th of 1999, [the petitioner] approached the Sonic Restaurant,

> also located on Harding Place here in Davidson County, with the same shotgun he had used at the Waffle House and approached two employees, Miss Jessica Moore (ph.) and Mr. Javier Hernandez (ph.), as they were attempting to close the restaurant. He instructed them to go back into the restaurant. He got notice, however, that a Metro police officer, Marvin Rivera (ph.), who was working security off-duty at the restaurant, was seated in his car with Miss Rosia Gross (ph.), not too far away. When he did notice the officer sitting in the car, he again lifted the shotgun and fired at the car. Fortunately neither Officer Rivera or Miss Gross were hurt at that time. However, Officer Rivera was able to return fire and strike [the petitioner].
>
> The police arrived, as well as an ambulance. As [the petitioner] was being transported to the hospital in the – in the company of an Officer Ryan Sledge (ph.), he did make statements implicating himself in both the attempted robbery and attempted murder at the Sonic, as well as the events at the Waffle House.
>
> Later testing by the TBI Crime Laboratory also confirmed that the same shotgun – the shotgun that was recovered was the weapon used in both of these criminal incidents.

As a result of the petitioner's guilty pleas in the Waffle House/Sonic cases, the petitioner received a total effective sentence of life plus twenty years incarceration.

On July 31, 2001, the petitioner filed a post-conviction petition relating to the Waffle House/Sonic cases. In his petition, he alleged that his trial counsel was ineffective for various reasons and that he did not knowingly and voluntarily enter his pleas in the Waffle House/Sonic cases. Thereafter, on February 1, 2002, the Davidson County Grand Jury returned an indictment in the Barcelona case. On July 12, 2004, the petitioner filed an amended petition in which he alleged further instances of ineffective assistance of counsel as well as prosecutorial misconduct "by [the State's] failure to advise [the petitioner] that there was a pending murder investigation [in the Barcelona case] at the time he entered the [Waffle House/Sonic] guilty plea[s] and that he was a suspect in this investigation." On August 25, 2004, a jury found the petitioner guilty of second degree murder in the Barcelona case. After his second degree murder conviction, the petitioner was sentenced to twenty-five years incarceration with the sentence to be served concurrently to the sentence in the Waffle House/Sonic cases.

At the petitioner's post-conviction hearing, trial counsel testified that he was appointed by the trial court to represent the petitioner in the Waffle House/Sonic cases. Counsel met with the petitioner a minimum of ten times, and the investigator hired by counsel met with the petitioner on additional occasions.

Counsel asserted that during the course of his representation, the investigator interviewed at least fourteen individuals, including the petitioner's co-defendants, and submitted to counsel reports summarizing those interviews. The investigator's report of the interview with the petitioner's cousin, Terry Baker, reflected that the petitioner told Terry Baker that "Clifton Baker" committed the Waffle House murder. Counsel noted that in the next paragraph of the report, the investigator referenced one of the petitioner's co-defendants, Clifton Smith. Counsel acknowledged that Clifton Smith and Clifton Baker could be the same person. Counsel stated that neither he nor the investigator ever interviewed anyone named Clifton Baker; however, the investigator interviewed Clifton Smith.

Counsel said that the investigator's report of his interview with the petitioner reflected that the petitioner maintained that he remained in a motel room with Chris Goodbread and Goodbread's grandmother while his co-defendants committed the Waffle House offenses. The investigator was never able to "identify or interview" Goodbread or Goodbread's grandmother concerning a possible alibi defense. The investigator noted in his report that when he interviewed the petitioner, the petitioner would not focus and would "jump around."

Counsel stated that during the course of his representation, he sent the petitioner to the Middle Tennessee Mental Health Institute (MTMHI) for a psychiatric evaluation. Counsel could not specifically recall why he decided to have the petitioner evaluated and could not recall if the petitioner had ever been diagnosed with a mental illness. Counsel stated that he had recently read a transcript of the petitioner's guilty plea hearing and observed that the petitioner had told the trial court that he occasionally heard voices. Counsel opined that the petitioner's claim of hearing voices could have been the reason he had the petitioner evaluated. Regardless, counsel asserted that it was not unusual for him to have a mental evaluation of a client accused of first degree murder. Counsel said that the evaluation revealed that the petitioner was competent to stand trial and that an insanity defense could not be supported.

Counsel recalled that the petitioner's trial had been set to begin on December 4, 2000, but the petitioner pled guilty on September 14, 2000. If the petitioner had been convicted of first degree murder, he faced a potential sentence of life without the possibility of parole. The plea agreement the petitioner accepted provided for a sentence of life with the possibility of parole for the first degree murder conviction.

Counsel said that he had reviewed the guilty plea agreement with the petitioner prior to the plea hearing, but he could not recall specific details of that process. Counsel explained that his normal practice was to let a client of "reasonable intelligence" read the plea, then he and the client would review the plea in a general fashion so that counsel could inform the client of his constitutional rights and determine if the client had any questions. Counsel had no specific recollection of reviewing the portion of the plea agreement which sought to ensure that the guilty pleas were not a result of threats or coercion; regardless, counsel was "sure" he reviewed that portion of the plea with the petitioner. Counsel could not recall if the petitioner had taken his medication

before making the pleas. Regardless, counsel noted that the transcript of the guilty plea hearing reflected that the petitioner told the trial court that he had taken his medication prior to the pleas.

Counsel stated that he had no recollection of the petitioner ever alleging that he was abused by guards while he was in jail. Counsel also did not recall the petitioner claiming that he wanted to plead guilty so he could get out of jail and escape the abuse. Counsel did not remember seeing any injuries on the petitioner during his representation. Counsel stated that he would never have let the petitioner plead guilty if he believed something was wrong with the petitioner mentally or physically at the time of the pleas. He also would not allow the petitioner to enter a plea if he thought the pleas were not knowing and voluntary or if the petitioner's behavior "set off alarms."

Counsel acknowledged that he never advised the petitioner that he was under suspicion in the Barcelona case and explained that he was never informed by the petitioner or the State about the Barcelona case. Counsel stated that there was a possibility that if he had known about the other case, he would have tried to include those charges in the plea agreement concerning the Waffle House/Sonic cases. However, counsel cautioned that he could only speculate about what his course of action would have been if he had been aware of another case. In fact, counsel stated that his advice to the petitioner in the Waffle House/Sonic cases might not have been different even if he had known about the Barcelona case because he did not have much room to negotiate.

David Collins testified that he represented the petitioner in the Barcelona case. He said that the Waffle House murder had been committed within days of the Barcelona murder. However, the Barcelona case, which occurred first, was not prosecuted until about three years later. Collins had filed a motion to dismiss the Barcelona case because of the delay in filing the indictment. That motion was unsuccessful.

Collins stated that Detective Fuqua, who had investigated the Barcelona case, had received a letter from then-Assistant District Attorney General T.J. Haycox saying that Haycox had no intention of presenting the Barcelona case to the grand jury. Collins said that Haycox had not discussed his decision with his superiors. Several months after the petitioner filed his instant post-conviction petition relating to the Waffle House/Sonic cases, the grand jury returned an indictment charging the petitioner with the Barcelona murder.

Collins testified that police knew about the Barcelona case two or three days after the petitioner was arrested in connection with the Waffle House/Sonic cases. In fact, Detective Fuqua had interviewed the petitioner in jail shortly after he had been shot during the Sonic incident. The petitioner told the detective that he could take police to shell casings relating to the Barcelona murder; however, police found no casings in the location suggested by the petitioner.

Collins stated that after the petitioner's conviction in the Barcelona case, the trial court imposed a sentence that was to be served concurrently with the sentences in the Waffle House/Sonic cases. However, Collins noted that

> the concurrent portion of it started only when the day he was served with this '02 indictment [in the Barcelona case]. So had this case not crawled under a shell or whatever happened to it for those years and he could have pled them out the same time, he would have gotten total concurrent time.

Collins qualified by explaining that the petitioner could have received total concurrent time only if both cases had been resolved at the same time and the State had made concurrent service part of the plea agreement. Collins conceded that, regardless, the petitioner had not been interested in entering a plea agreement in the Barcelona case because he had maintained that he was innocent of that offense. Collins stated that the petitioner "made it clear he wasn't pleading to nothing and he wanted a trial." Collins acknowledged that if the Barcelona case had been prosecuted and a conviction obtained prior to the prosecution of the Waffle House/Sonic cases, the Barcelona murder conviction could have been an aggravating factor in the State's subsequent pursuit of the death penalty in the Waffle House/Sonic cases.

Dr. Rokeya Farooque, a forensic psychiatrist with the Forensic Service Program at the MTMHI, testified that the petitioner was admitted for evaluation in March 2000 and August 2002. Both evaluations revealed that the petitioner was competent to stand trial and that an insanity defense could not be supported. Dr. Farooque stated that the petitioner had been "in and out of juvenile correctional center, psychiatric hospital, or some other kind of facilities all his life." When the petitioner was a juvenile, he was diagnosed with conduct disorder or other social personality disorders. Dr. Farooque testified that during the March 2000 evaluation, the petitioner was capable of understanding the world around him. She recalled that the petitioner did not fully cooperate with psychological testing. The doctors determined that the petitioner "didn't want to do right." At the conclusion of the March 2000 evaluation, the petitioner was diagnosed with "psychotic disorder not otherwise specified." The petitioner had also been diagnosed with "antisocial personality disorder AXIS II, . . . poly-substance dependence . . . impulse control disorder, post traumatic stress disorder, and schizo-affective disorder with paranoid features."

Dr. Farooque said that the petitioner was probably diagnosed as having schizo-affective disorder with paranoid features

> because of his complaint of hearing voices, complaining of feeling like everybody is against him, complain of feeling like that because he is black, he is not going to get good justice, and those kinds of feelings.

Dr. Farooque asserted that the petitioner "is very much institutionalized [and] knows the ins and outs of the system." She opined that the petitioner was capable of taking care of himself and had the propensity to start fights. She maintained, "I don't think that it has any direct connection that he got beat up by somebody and that is why the next day or the day after that he pleaded guilty. . . . As I know him, I don't think there is any chance of that." Dr. Farooque stated that the petitioner was

capable of defending himself and was competent to stand trial. She said, "As a psychiatrist, I can say that he doesn't have that kind of mental illness that is going to interfere him to make decisions, whether he got beat up or not."

Richard Currin testified that in 1999 and 2000, he worked in Prison Health Services as mental health coordinator for the Davidson County Criminal Justice Center. In his position, he met with the petitioner multiple times during the petitioner's confinement in the jail. On May 5, 2000, the petitioner verbalized a fear of the jail's correctional officers. Currin noted that the petitioner made such comments more than once. Currin stated that the petitioner "had a consistent theme of being, for lack of a better word, persecuted by staff at the jail and that he was being picked on individually." Currin encouraged the petitioner "not to make himself attentionable, to try to kind of lay low, for lack of a better word, to maintain some stability about his interactions with folks at the jail."

Currin had been instructed by Dr. Farooque to treat the petitioner with two anti-psychotic medications and a mood stabilizer. Currin noted that the petitioner was initially only marginally compliant in taking his medication; however, by the end of his time at the jail, his compliance had improved. Currin believed that the medication helped the petitioner, but the petitioner denied that the medication was effective. Dr. Farooque "also recommended that we keep him under close observation inasmuch as she felt that he would act out in jail either factitiously or in a malingering fashion to get back to the hospital." Currin believed that the petitioner "had an agenda of leaving the jail at any and all cost . . . by attempting suicide, by going to the hospital or by being transferred." Currin opined that the petitioner could not tolerate incarceration.

Currin noted that the petitioner spent most of his time in the jail near Currin's office in a "suicide cell" or in a special management unit, which areas were controlled by Prison Health Services. When the petitioner was removed from those areas, he would immediately report that the guards had abused him and would thereby again be placed in the mental health area. Currin acknowledged that belligerent inmates who refused to follow instructions would have difficulty with the guards in the jail. Therefore, if the petitioner was having problems with the guards, "it could have been brought on by his own behavior." Currin stated that the petitioner, regardless of whether he was taking his medication, "consistently verbalized that he believed that he was being persecuted in the jail."

As the final witness at the post-conviction hearing, the petitioner testified that while he was in jail awaiting trial on the Waffle House/Sonic cases, he was "physically assaulted" by the guards in the jail. He believed that the guards "needed to retaliate because of the incident with the officers, and it just so happened one of the victim's cousins was also at the Sheriff's Department." The petitioner was told that he could be provoking the officers. The petitioner said that at the time, he was filled with hate and anger and never focused on his case because he was constantly fighting with the officers. The petitioner stated that he tried to get a judge to move him to "safekeeping," but he was unsuccessful in his attempt.

The petitioner became depressed "because people from my community that might have been in there had already left, went home, so I was feeling real isolated." The petitioner threatened suicide in order to stop "all Caucasian males that was jumping on me." He said that he did not really want to commit suicide, but the only way he knew to escape the beatings was to threaten to kill himself. He testified that he told his trial counsel about the abuse, and counsel became "scared. He is a boy." The petitioner told Currin about the abuse. He said Currin "saw the effects of being [assaulted], he was a boy, he wasn't a man, he was a coward, so he is not going to object or try to enforce and find out why this is happening to me. He is not going to do that because he is a boy, and a boy stays in his place." Currin told the petitioner that "[i]t will be over. Just bear with me."

The petitioner stated that he entered his pleas in the Waffle House/Sonic cases because he was afraid for his safety, and he wanted to get away from the jail. The petitioner said that he had intended to proceed to trial in the Waffle House/Sonic cases despite the fact that he and counsel "had no discussion about the case." He told counsel, "I want to fight . . . . I don't want to cop out." He was unsure of how often he met with counsel because the meetings often coincided with one of his fights in the jail. However, the petitioner knew that he never sat down with counsel and discussed the facts of the Waffle House/Sonic cases. The petitioner stated that after he was shot at the Sonic restaurant, he gave a "dying declaration" in which he confessed to the Waffle House murder because he feared being attacked in the hospital.

The petitioner acknowledged that he spoke with the investigator counsel had hired. The petitioner maintained, "I didn't know nothing about no second murder investigation. . . . I barely even knew about the first murder investigation. I didn't read no discovery or nothing." The petitioner contended that he became aware of the Barcelona case after he filed his post-conviction petition in the Waffle House/Sonic cases. Later, the petitioner admitted that he recalled going with Detective Fuqua to the Barcelona Apartments to look for shell casings. He said he had told police only what they wanted to hear. Regardless, the petitioner believed he was not a suspect in that murder. The petitioner said that he did not tell trial counsel about the Barcelona case "because after that conversation, it never came up to me again under no circumstances of me even being remotely even going to be charged with it, with that murder."

He admitted that he would have pled guilty in the Waffle House/Sonic cases even if he had known about the Barcelona case because "I was being beat on. I didn't care, I didn't care, I just wanted to get out of that situation." He believed he was in a "no-win situation." Counsel told the petitioner that the only way he could be moved from the jail was "if you take some time." Three days later, the petitioner entered his guilty pleas. He maintained that if he had not received the beatings and if he had known "the facts as [he] know[s] them now," he would not have pled guilty.

The petitioner said that he had a long history of hearing voices. He stated:

> I didn't even really understand what I was pleading guilty to. The psychiatrist was so scared, he just kept medicating me and medicating me, and when I didn't take the medicine, it would have side effects

> to where I would become more angry, you know, and less involved in things around me, so [counsel] never – the only thing I know that he told me, you sign these papers, we are going to get you out of here.

The petitioner acknowledged that during the plea proceedings the trial court asked him if he had been threatened into pleading guilty. The petitioner said that he told the court that he had not been threatened and stated that he did so on the advice of trial counsel. He claimed that he did not answer the court's question truthfully.

At the conclusion of the post-conviction hearing, the post-conviction court denied the petition, finding that the petitioner had not proven that his counsel was ineffective, that his pleas were not knowingly or voluntarily entered, or that the State committed prosecutorial misconduct. On appeal, the petitioner contends that the post-conviction court erred in denying his petition.

II. Analysis

A. Ineffective Assistance

To be successful in his claim for post-conviction relief, the petitioner must prove all factual allegations contained in his post-conviction petition by clear and convincing evidence. See Tenn. Code Ann. § 40-30-110(f) (2003). "'Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.'" State v. Holder, 15 S.W.3d 905, 911 (Tenn. Crim. App. 1999) (quoting Hodges v. S.C. Toof & Co., 833 S.W.2d 896, 901 n.2 (Tenn. 1992)). Issues regarding the credibility of witnesses, the weight and value to be accorded their testimony, and the factual questions raised by the evidence adduced at trial are to be resolved by the post-conviction court as the trier of fact. See Henley v. State, 960 S.W.2d 572, 579 (Tenn. 1997). Therefore, we afford the post-conviction court's findings of fact the weight of a jury verdict, with such findings being conclusive on appeal absent a showing that the evidence in the record preponderates against those findings. Id. at 578.

When a petitioner seeks post-conviction relief on the basis of ineffective assistance of counsel, "the petitioner bears the burden of proving both that counsel's performance was deficient and that the deficiency prejudiced the defense." Goad v. State, 938 S.W.2d 363, 369 (Tenn. 1996) (citing Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984)). To establish deficient performance, the petitioner must show that counsel's performance was below "the range of competence demanded of attorneys in criminal cases." Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). To establish prejudice, the petitioner must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. Moreover,

> [b]ecause a petitioner must establish both prongs of the test, a failure to prove either deficiency or prejudice provides a sufficient basis to

> deny relief on the ineffective assistance claim. Indeed, a court need not address the components in any particular order or even address both if the [petitioner] makes an insufficient showing of one component.

Goad, 938 S.W.2d at 370 (citing Strickland, 466 U.S. at 697, 104 S. Ct. at 2069). Additionally, in the context of a guilty plea, "the petitioner must show 'prejudice' by demonstrating that, but for counsel's errors, he would not have pleaded guilty but would have insisted upon going to trial." Hicks v. State, 983 S.W.2d 240, 246 (Tenn. Crim. App. 1998); see also Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985).

On appeal, the petitioner maintains that his trial counsel was ineffective in failing to properly and fully investigate the Waffle House case; specifically, the petitioner maintains that counsel should have investigated Clifton Baker and Nikki Beaudoin as potential perpetrators of the Waffle House murder. The petitioner also complains that counsel knew about the State's plea offer on September 6, 2000, but he neglected to inform the petitioner of the plea offer until September 13, 2000, the day before the petitioner entered his guilty pleas. The petitioner next claims that counsel failed to "follow-up on information regarding the [Barcelona] case which would have directly affected the outcome of this matter." Finally, the petitioner contends that counsel failed to evaluate the petitioner's mental health at the time he entered his guilty pleas.

First, we will address the petitioner's complaint that counsel failed to properly investigate his case and specifically failed to investigate other potential perpetrators Clifton Baker and Nikki Beaudoin. The proof at the post-conviction hearing revealed that the petitioner had many co-defendants in the Waffle House case, including Nikki Beaudoin and Clifton Smith. Counsel testified that his investigator spoke with both of those individuals prior to the petitioner's guilty pleas. Further, counsel stated that although the investigator's report indicated that the petitioner told his cousin that "Clifton Baker" committed the murder, the investigator may have meant to write that Clifton Smith was the perpetrator. Counsel opined that Clifton Baker and Clifton Smith could well be one and the same person. The petitioner does not indicate what information could have been learned by further investigation. Notably, the petitioner did not call Beaudoin or Clifton Baker as witnesses at his post-conviction hearing. Generally, "[w]hen a petitioner contends that trial counsel failed to discover, interview, or present witnesses in support of his defense, these witnesses should be presented by the petitioner at the evidentiary hearing." Black v. State, 794 S.W.2d 752, 757 (Tenn. Crim. App. 1990). We may not speculate on what benefit these witnesses might have offered to the petitioner's case, nor may we guess as to what evidence further investigation may have uncovered. Id. Accordingly, the petitioner has failed to demonstrate prejudice in this regard.

The petitioner's second claim, that counsel did not timely inform him of the State's plea offer, was not raised in his post-conviction petitions. This court will not address issues raised for the first time on appeal. State v. Alvarado, 961 S.W.2d 136, 153 (Tenn. Crim. App. 1996); State v. Turner, 919 S.W.2d 346, 356-57 (Tenn. Crim. App. 1995). Regardless, the petitioner does not argue

what prejudice he suffered as a result of counsel's action or inaction. Therefore, he has not proven ineffective assistance in relation to this issue.

The petitioner next claims that counsel's failure to "follow-up" on the Barcelona case directly affected the outcome of the petitioner's Waffle House/Sonic cases. Counsel testified at the post-conviction hearing that he did not know that the petitioner was a suspect in the Barcelona case. Moreover, the petitioner testified that, although he had tried to show police the location of shell casings relating to the Barcelona case, he did not inform counsel that he had spoken with police regarding the Barcelona case. The post-conviction court found that the petitioner "did not demonstrate by clear and convincing evidence that trial counsel . . . was ineffective for not knowing about the other case and bundling it as part of the plea agreement." Moreover, we note that in the Barcelona case the petitioner received a twenty-five year sentence which is to be served concurrently to the instant sentence of life plus twenty years. The petitioner has failed to argue as to exactly what prejudice he suffered by any alleged deficiency by trial counsel. Accordingly, we conclude that the petitioner has failed to prove that counsel was ineffective with regard to the Barcelona case.

As his final ineffective assistance claim, the petitioner contends that counsel failed to have the petitioner's mental health evaluated at the time he entered his guilty pleas. Counsel testified that the petitioner underwent a competency evaluation at the MTMHI, and in April 2000, he was pronounced competent to stand trial. The MTMHI also found that an insanity defense could not be supported. Counsel testified that the plea hearing transcript reflected that the petitioner was taking his medication on the day of his guilty pleas. Additionally, counsel could not recall any warning signs in the petitioner's behavior to indicate the petitioner was not competent to plead guilty. Further, Dr. Farooque testified that the petitioner was competent to stand trial and had no mental illness which would interfere with his ability to make decisions. Therefore, we conclude that the petitioner has failed to prove ineffective assistance in this regard.

B. Knowing and Voluntary Guilty Pleas

On appeal, the petitioner contends that his guilty pleas were not knowingly and voluntarily entered because his mental health was poor when he entered the pleas and because he entered the pleas only to escape being beaten by guards in the jail. In determining whether a petitioner's guilty plea was knowing and voluntary, this court must look at the totality of the circumstances. See State v. Turner, 919 S.W.2d 346, 353 (Tenn. Crim. App. 1995). "This court is bound by the post-conviction court's findings unless the evidence preponderates otherwise." Bates v. State, 973 S.W.2d 615, 631 (Tenn. Crim. App. 1997).

When a defendant enters a plea of guilty, certain constitutional rights are waived, including the privilege against self incrimination, the right to confront witnesses, and the right to a trial by jury. See Boykin v. Alabama, 395 U.S. 238, 243, 89 S. Ct. 1709, 1712 (1969). Therefore, in order to comply with constitutional requirements, a guilty plea must be a "voluntary and intelligent choice among the alternative courses of action open to the defendant." North Carolina v. Alford, 400 U.S. 25, 31, 91 S. Ct. 160, 164 (1970). In order to ensure that a defendant understands the constitutional

rights being relinquished, the trial court must advise the defendant of the consequences of a guilty plea, and determine whether the defendant understands those consequences. See Boykin, 395 U.S. at 244, 89 S. Ct. at 1712.

In State v. Mackey, 553 S.W.2d 337, 341 (Tenn. 1977), our supreme court set out the procedure trial courts should follow when accepting a guilty plea. Prior to accepting the guilty plea, the trial court must address the defendant personally in open court, inform the defendant of the consequences of the guilty plea, and determine whether the defendant understands those consequences. Id.; see also Tenn. R. Crim. P. 11(c). A verbatim record of the guilty plea proceedings must be made and must include, without limitation, "(a) the court's advice to the defendant, (b) the inquiry into the voluntariness of the plea including any plea agreement and into defendant's understanding of the consequences of his entering a plea of guilty, and (c) the inquiry into the accuracy of a guilty plea." Id.

In determining whether the petitioner's guilty plea was knowing and voluntary, this court looks to the following factors:

> [T]he relative intelligence of the [petitioner]; the degree of his familiarity with criminal proceedings; whether he was represented by competent counsel and had the opportunity to confer with counsel about the options available to him; the extent of advice from counsel and the court concerning the charges against him; and the reasons for his decision to plead guilty, including a desire to avoid a greater penalty that might result from a jury trial.

Blankenship v. State, 858 S.W.2d 897, 904 (Tenn. 1993).

In its order denying relief, the post-conviction court noted that counsel testified that the petitioner was evaluated at the MTMHI in April 2000, and he was found competent to stand trial. A few months later, the petitioner entered his guilty pleas. Dr. Farooque testified that none of the petitioner's mental health issues would interfere with his ability to make decisions, even if the petitioner had been beaten as he claimed. Dr. Farooque did not believe that there was any direct connection between any alleged abuse and the petitioner's guilty pleas. Additionally, the court observed that the petitioner's claim that he was assaulted by guards in prison was uncorroborated. Currin, whom the petitioner maintained supported his claim, testified only that the petitioner reported fearing the guards. Currin stated that the petitioner often felt "persecuted." Currin also stated that the petitioner was frequently belligerent, and Currin explained that belligerent inmates often had difficulty with the guards. Dr. Farooque testified that the petitioner was prone to starting fights. Moreover, during the plea proceedings, the petitioner denied that he was threatened or coerced into pleading guilty. The post-conviction court found that the petitioner did not present clear and convincing evidence that his pleas were not knowingly and voluntarily entered. After our review of the record, we agree with the post-conviction court.

C. Prosecutorial Misconduct

In his brief, the petitioner states that his final argument concerns the "prosecutorial misconduct in this matter and the stand taken by the District Attorney's Office after the [petitioner] filed his post conviction relief petition." The petitioner specifically notes that shortly after filing his post-conviction petition regarding the Waffle House/Sonic cases, he was indicted for his involvement in the Barcelona case. The petitioner then launches into a lengthy diatribe concerning the petitioner's right to a speedy trial in the Barcelona case. The petitioner makes no argument as to how the State committed prosecutorial misconduct in the *instant* cases, namely the Waffle House/Sonic cases. Regardless, the petitioner's claims of prosecutorial misconduct are generally more properly the subject of a direct appeal of the Barcelona case; as such, this appeal is not the proper forum for his claims. See Tenn. Code Ann. § 40-30-106(g). Moreover, we note that at the time of the post-conviction hearing, the petitioner's direct appeal in the Barcelona case was pending in this court. In that appeal, the petitioner raised an issue regarding the trial court's refusal to dismiss the Barcelona indictment due to an improper delay by prosecution. On appeal, this court recently ruled that the trial court did not err in refusing to dismiss the indictment in the Barcelona case. State v. Shelvy A. Baker, No. M2005-00298-CCA-R3-CD, 2006 WL 2682820, at *7 (Tenn. Crim. App. at Nashville, Sept. 14, 2006). We will not revisit the petitioner's claim. Suffice it to say, the petitioner is not entitled to post-conviction relief on the Waffle House/Sonic cases due to any issues relating to the Barcelona case.

III. Conclusion

Finding no error, we affirm the judgment of the post-conviction court.

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NORMA McGEE OGLE, JUDGE